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democracy in Indonesia



Ensuring Freedom of Expression in West Papua
Joint Stakeholders' Submission
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Introduction

1. This submission is made to the OHCHR by TAPOL and *Bersatu untuk Kebenaran* (BUK; United for Truth). TAPOL is a UK-based NGO formed in 1973 that promotes human rights, peace and democracy in Indonesia. BUK is a West Papuan grassroots NGO founded in Biak in 2008 by West Papuan survivors of violence. It has branches across West Papua and seeks to build the capacity of victims and victims' groups so that they can campaign for their rights, and the rights of their families, in particular to justice and reparations. Both TAPOL and BUK are relevant stakeholders under Human Rights Council Resolution 5/1 of 18 June 2007 as reaffirmed by Resolution 16/21 of 25 March 2011. Information provided by TAPOL was included in the summary of stakeholders' submissions for both the first cycle review of Indonesia in April 2008, and the second cycle review in May 2012.

2. The main focus of this submission is freedom of expression and the use of treason laws in the conflict region of West Papua.¹

Methodology

3. The information in this submission is based on research and monitoring activities undertaken by TAPOL, BUK, and Papuans Behind Bars (PBB) since 2012. PBB is a collaborative project initiated by West Papuan civil society groups. It is a grassroots initiative and represents a broad collaboration between lawyers, human rights groups, adat groups, activists, journalists and individuals in West Papua, as well as Jakarta-based and international NGOs and solidarity groups. Additionally, further materials, data and analysis have been provided by TAPOL's other West Papua-based partners and network contacts.

Priority Issues: Freedom of Expression and the use of Treason laws in West Papua

4. This submission highlights violations of the right to freedom of expression that involves the punishment of individuals for peaceful political activities, most notably in West Papua. It calls into question the regular practice of charging such individuals with the offence of "makar" (treason) under Article 106 of the Indonesian Criminal Code and draws on specific research undertaken by TAPOL, PBB, and other partners in relation to a wide array of freedom of expression issues including arbitrary detentions and political arrests. Articles 106 and 110 of the Indonesian Criminal Code have been repeatedly utilised to criminalise the internationally protected right of freedom of expression, and identified by recommendations 109.32 and 109.33 during the 2nd cycle review. The Government of Indonesia did not support these recommendations.²

5. Freedom of Expression is a priority issue because it is an essential instrument for the promotion and protection of other human rights. In relation to West Papua, freedom of expression is required in order to create the conditions in which the political problems of the territory can be peacefully and justly resolved. The criminalisation of free expression also restricts the ability of human rights defenders to undertake their vital work in promoting and protecting human rights.

6. Indonesia's international and national obligations to uphold freedom of expression
Indonesia's obligation to comply with international standards on freedom of expression arises from its accession in 2006 to the International Covenant on Civil and Political Rights, Article 19 of which concerns

¹ For the purposes of this submission, the term 'West Papua' refers to the Indonesian provinces of Papua and West Papua, respectively, as one territory. The terms "Papua province" or "West Papua province" will be used when referring to these specific provinces.

² 109.32. End prosecutions under Articles 106 and 110 of your criminal code for exercising the internationally protected right of freedom of expression, and re-evaluate the convictions and sentences of individuals prosecuted for those actions (United States of America); Source of position: A/HRC/21/7 - Para. 109 & A/HRC/21/7/Add.1 - Para. 6.13

freedom of expression. The obligation is incorporated into Indonesian law by Article 67, Law 39 of 1999 on Human Rights:

'Everyone within the territory of the Republic of Indonesia is required to comply with Indonesian legislation and Indonesian Law, including unwritten law and international law concerning human rights ratified by Indonesia.'

7. Freedom of expression is furthermore guaranteed by Article 28(E)(3) of the Indonesian Constitution:

'Every person shall have the right to the freedom to associate, to assemble and to express opinions.'

8. And by Articles 23 and 25 of Law 39 of 1999 on Human Rights:

Article 23

(1) Everyone has the freedom to choose and hold his political beliefs.

(2) Everyone has the freedom to hold, impart and widely disseminate his beliefs, orally or in writing through printed or electronic media, taking into consideration religious values, morals, law and order, the public interest and national unity.

Article 25

Every citizen has the right to express his opinion in public, and this includes the right to strike, according to prevailing law.

Ensuring Freedom of Expression

9. The issue of freedom of expression as it relates to political activities was raised by several countries during the 2nd cycle review. Among them, Australia recommended that the Government of Indonesia to "Intensify its efforts to respect and uphold freedom of expression, including political expression, and the freedom to manifest one's religious belief, for all its citizens, including by ensuring effective state protection for minorities."³ Though the Government of Indonesia supported this recommendation, in the case of West Papua, the space for freedom of expression and opinion remains heavily restricted. Evidence is given below and derived from monitoring and tracking incidences, frequency, and scale of political arrests and criminalisation for exercising rights guaranteed under Indonesia's national and international obligations.

10. The majority of political arrests⁴ in West Papua from 2012 to 2014 were in relation to participation in demonstrations or other types of peaceful political activity. 2013 was particularly notable during this three-year period as the number of recorded arbitrary arrests increased to 548.⁵ Of these, at least 472 people (86%) of political detainees were arrested for participating in peaceful demonstrations, marches or gatherings.⁶

11. In 2015, at least 1083 people were arbitrarily arrested. At the time, this was the highest number of arbitrary arrests in a year since PBB began tracking these issues, and nearly three times the number of arrests recorded in 2014. More than half the total number of arrests was made during the commemorative dates of 1 May and 1 December. At least 264 people were detained for commemorating 1 May while 355

³ 108.113 Intensify its efforts to respect and uphold freedom of expression, including political expression, and the freedom to manifest one's religious belief, for all its citizens, including by ensuring effective state protection for minorities (Australia); **Source of position:** A/HRC/21/7 - Para. 108

⁴ Following *Papuans Behind Bars*, political arrests are defined here as arrests which appear to be politically motivated, and can include arrests which happen in political contexts such as demonstrations or places used by politically active organisations and people; arrests of politically active people or their relatives; arrests of people because of their alleged political affiliations; arrests for political activities such as raising a flag or engaging in civil resistance activities, mass arrests, and politically-motivated arrests under manipulated criminal charges.

⁵ *Papuans Behind Bars* (2014) 'Political Arrests in West Papua from 2012-2014 (Briefing Paper)', http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.5

⁶ *Papuans Behind Bars* (2014) 'Political Arrests in West Papua from 2012-2014 (Briefing Paper)', http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.5

people were detained for 1 December activities.⁷ At least 22 demonstrations were dispersed or disallowed with a total of 873 people, or 80% of the total number of detainees in 2015, arrested because they either planned or took part in peaceful demonstrations. This is a 374% increase from 2014 figures, where 184 West Papuans were arbitrarily arrested for their involvement in demonstrations. Data shows that since 2012, participation in peaceful demonstrations accounts for the majority of arbitrary arrests of West Papuans across Indonesia.⁸

12. From January through June 2016, there have been 4,462 political arrests documented in West Papua. All of the 1,168 arrested as part of 15 June demonstrations across West Papua were reportedly released, which suggests that security forces-backed tactics of dispersion and arbitrary arrest were motivated by aims to prevent Indonesian citizens from exercising their rights to freedom of expression and political opinion.⁹

13. From 2012-2014, the number of recorded cases of torture increased. In 2013, the number of recorded cases of torture on arrest and in detention increased by 57% as compared with the previous year (from 19 cases in 2012 to 30 cases in 2013). The situation worsened in 2014, with the figure more than doubling from 30 to 66 cases, and more detainees were tortured for their involvement in peaceful activity and/or demonstrations.¹⁰ In 2015, the number of cases of ill-treatment of detainees was more than 4.5 times higher than in 2014, this can in part be explained by the large increase in number of arrests.¹¹ The more frequent use of torture indicated a greater willingness of security forces to silence political protest at all costs.¹²

14. The number of people arrested for political activities steadily increased from 25 in 2012, to 32 in 2013 and 62 in 2014. Political activity included involvement in West Papuan civil society groups or institutions such as the People's Local Parliament (Parlemen Rakyat Daerah, PRD) or the KNPB, conducting human rights work,¹³ or for expressing dissenting political opinions.¹⁴

15. West Papuans arrested for being alleged affiliation with pro-independence groups, for example, *Organisasi Papua Merdeka* (Free Papua Movement; OPM) are often villagers who live in remote areas where armed pro-independence groups are thought to be active.¹⁵ West Papuans accused of supporting or being sympathetic to armed pro-independence groups often face such accusations without any evidence. For

⁷ Papuans Behind Bars (2015) 'Rising Voices, Rising Arrests: A look at West Papua in 2015', <http://www.papuansbehindbars.org/wp-content/uploads/2016/08/2015-Rising-Voices-Rising-Arrests.screen.pdf> (accessed 19 September 2016) p.10

⁸ *ibid*, p.10

⁹ Papuans Behind Bars (2016) 2nd quarter update (forthcoming)

¹⁰ Papuans Behind Bars (2014) 'Political Arrests in West Papua from 2012-2014 (Briefing Paper)', http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.9

¹¹ Papuans Behind Bars (2015) 'Rising Voices, Rising Arrests: A look at West Papua in 2015', <http://www.papuansbehindbars.org/wp-content/uploads/2016/08/2015-Rising-Voices-Rising-Arrests.screen.pdf> (accessed 19 September 2016) p.5

¹² Papuans Behind Bars (2014) 'Political Arrests in West Papua from 2012-2014 (Briefing Paper)', http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.10

¹³ In December 2012, Andinus Karoba was shot on arrest and sentenced to 22 months' imprisonment under bogus charges of theft. Reports from local human rights sources strongly suggest that he was targeted due to his work as a human rights investigator with the Koteka Council of Indigenous Peoples (Dewan Masyarakat Adat Koteka, Demmak)

¹⁴ Papuans Behind Bars (2014) 'Political Arrests in West Papua from 2012-2014 (Briefing Paper)', http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.5

¹⁵ In the Sasawa case of February 2014, seven detainees were tortured on arrest and forced to confess to involvement with armed group TNPB (Tentera Nasional Papua Barat, West Papuan National Army). In November 2014, they were sentenced to 3.5 years' imprisonment. Papuans Behind Bars (2014) 'Political Arrests in West Papua from 2012-2014 (Briefing Paper)', http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.6

example, in December 2012, a farmer in Timika was detained and tortured overnight for allegedly growing food for the OPM.¹⁶

16. The use and possession of the Morning Star flag, a symbol of West Papuan nationalism and cultural unity, continues to be used as a basis for arrest, interrogation, and intimidation. In 2012, 23 people were arrested for either raising or being in possession of the Morning Star flag, symbols or attributes. In 2013, this increased to 26 cases of Morning Star-related arrests. In 2014, 25 people were arrested for participating in a demonstration in Timika that featured the use and display of the Morning Star flag and attributes.¹⁷ In 2015, at least five such cases were recorded. In one of them, a 15-year-old boy in Sorong was questioned and threatened by police officers for wearing a t-shirt with an image of the Morning Star and a slogan stating “Free West Papua.”¹⁸

17. Indonesian authorities have also extended their concern to other symbols and attributes recently adopted by West Papuan civil society groups. This includes the use of Melanesian-related symbols and flags. In December 2013, two men were arrested in Sarmi, Papua province, in relation to the possession of a 16-star Melanesian flag. Given the recent focus of the Melanesian Spearhead Group in West Papua, there is concern that authorities will continue to target the use of other attributes related to Melanesian identity.¹⁹

Recommendations to the Government of Indonesia towards ensuring freedom of expression

18. Comply with its international and national obligations to respect the right to freedom of expression and should recognize that the use of treason laws to punish peaceful political activities is a violation of those obligations.

19. Evaluate and review operational security management in West Papua, including reviewing structures within the security forces to ensure greater accountability and protection of human rights.

20. Address the question how it will ensure the full enjoyment of freedom of expression in relation to legitimates political activities in West Papua;

21. Allow free and unrestricted access for all UN Special Rapporteurs wishing to visit and report on West Papua. it should further issue invitations to relevant UN special mechanisms and procedures to visit Indonesia and West Papua, including Mr. David Kaye, the Special Rapporteur on Freedom of Expression, as well as the Working Group on Arbitrary Detentions, the Special Rapporteur on the Situation of Human rights Defenders, and the Special Rapporteur on the rights of indigenous peoples.

22. Order the unconditional release of all West Papuan political prisoners as part of a comprehensive policy to end the punishment of free expression and association, and expunge any associated criminal records.

23. Revoke Article 6 of Government Regulation 77/2007 on Regional Symbols, which prohibits the display of separatist flags or logos, or amend it in accordance to international human rights standards.

¹⁶ Papuans Behind Bars (2014) ‘Political Arrests in West Papua from 2012-2014 (Briefing Paper)’, http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.6

¹⁷ Papuans Behind Bars (2014) ‘Political Arrests in West Papua from 2012-2014 (Briefing Paper)’, http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.8

¹⁸ Papuans Behind Bars, October/November 2015 update. <http://www.papuansbehindbars.org/?p=3587> (accessed 20 September 2016)

¹⁹ Papuans Behind Bars (2014) ‘Political Arrests in West Papua from 2012-2014 (Briefing Paper)’, http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.8

24. Indonesia should further strengthen the rule of law in West Papua by ending impunity for violations of human rights by security forces personnel in accordance with the commitment it made to the HRC at the time of the first and second Universal Periodic Review cycles

25. In the interests of peace and reconciliation, Indonesia should apologise to the West Papuan people for the violations of human rights committed under its administration.

The use of treason laws in West Papua

26. The Government of Indonesia is supportive to recommendation of Germany on the second cycle:

Ensure that provisions of the Indonesian Criminal Code, such as articles 106 and 110 are not misused to restrict the freedom of speech²⁰

27. The Indonesian Government's response to recommendations of the United States of America²¹ and Canada,²² highlights vast discrepancy with regards to respecting the rights to freedom of expression and peaceful protest:

Government of Indonesia attaches great importance to the protection of those who work in the promotion and protection of human rights including human rights activists. The current national laws and regulations as well as the general climate of openness that is supported by press freedom sufficiently provide such protection. ... The government further continues to review and identify laws and regulations that potentially have negative impact on the exercise of the right of every person to freedom of expression.²³

28. The offence of *makar* (treason) was introduced into Indonesian law as part of the Criminal Code that came into force under the Dutch colonial administration in the early twentieth century. Since the downfall of the "New Order" regime under former president Suharto, Indonesia has made commendable efforts to remove repressive colonial and New Order-era legislation from its statute book. The 1969 Anti-Subversion law was repealed in 1999 while the notorious "hate-sowing" articles (154 and 155 of the Criminal Code) were declared unconstitutional by the Indonesian Constitutional Court in 2007. However, Indonesia has so far failed to complete its review of the Criminal Code.

29. West Papuan civil society actors are regularly arrested and detained for peaceful actions, such as raising the West Papuan "Morning Star" flag or attending demonstrations and public events that are associated with West Papuan nationalism. They are frequently charged with *makar* (treason) and if convicted under Article 106, face prison sentences of up to twenty years or life. According to data recorded by TAPOL, there are currently at least 17 West Papuans in prison awaiting trial or serving time for *makar* and related offences, three of which have arisen in 2016.²⁴

30. Furthermore, according to the observations of local activists, it would appear that the practice of charging West Papuan activists with *makar* became prevalent only after the repeal of the Anti Subversion

²⁰ 108.116 Ensure that provisions of the Indonesian Criminal Code, such as articles 106 and 110 are not misused to restrict the freedom of speech (Germany); **Source of position:** A/HRC/21/7 - Para. 108 (supported)

²¹ 109.32. End prosecutions under Articles 106 and 110 of your criminal code for exercising the internationally protected right of freedom of expression, and re-evaluate the convictions and sentences of individuals prosecuted for those actions (United States of America); **Source of position:** A/HRC/21/7 - Para. 109 & A/HRC/21/7/Add.1 - Para. 6.13 (noted)

²² **109.33** Take steps, particularly in Papua, to increase protection for human rights defenders against stigmatization, intimidation and attacks and to ensure respect for freedom of expression and peaceful protest, including through a review of regulations that can be used to restrict political expression, in particular article 106 and 110 of the criminal code, and the release of those detained solely for peaceful political activities (Canada);

Source of position: A/HRC/21/7 - Para. 109 & A/HRC/21/7/Add.1 - Para. 6.13 (noted)

²³ Source of position: A/HRC/21/7 - Para. 6.13

²⁴ Papuans Behind Bars (2016) 2nd quarter update (forthcoming)

Law. This suggests that the authorities are simply using a different means to punish free expression in West Papua.

31. From 2012 to 2014, treason laws continued to be used to repress free expression in West Papua. Throughout this three-year period, charges of treason (Article 106) or conspiracy to commit treason (Article 110) were the charges most frequently used against political detainees. In 2012, there were 27 cases of treason, decreasing slightly to 25 cases in 2013 and increasing to 31 cases in 2014.²⁵

Recommendations to the Government of Indonesia on the use of treason laws in West Papua

32. In support to the position on the UPR second cycle of United States of America (109.32) and Canada (109.33),

33. Indonesia should immediately end the practice of charging persons engaged in non-violent political activities with criminal offences such as makar under Article 106.

34. Government of Indonesia should comply with its international & national obligations to respect the rights to freedom of expression and should recognise that the use of treason laws to punish peaceful political activities is a violation of those obligations.

21 September 2016

²⁵ Papuans Behind Bars (2014) 'Political Arrests in West Papua from 2012-2014 (Briefing Paper)', http://tapol.org/sites/default/files/sites/default/files/pdfs/PBB%20Briefing%20Paper_1.pdf (accessed 19 September 2016) p.7